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**SWUPA No. 3623N**

**TRANSMITTAL**

Date: January 28, 2016

To: COMMISSION ON WATER RESOURCE MANAGEMENT  
STATE OF HAWAII  
Room 227  
1151 Punchbowl St.  
Honolulu HI 96813

From: Noelani Almeida

Re: Surface Water Use Permit Applications  
Integration of Appurtenant Rights and  
Amendments to the Interim Instream Flow  
Standards, Na Wai Eha Surface Water  
Management Areas of Waihee, Waiehu, Iao  
and Waikapu Streams, Maui

Case No.: CCH-MA 15-01

Subject: Minute Order #3 Filing

Item	Quantity	Document
1	1 set	Original: Witness List; Witness Testimony; Exhibit List; Exhibits
2	5 sets	Copies (Bound): Witness List; Witness Testimony; Exhibit List; Exhibits

*Remarks:*

It is beyond our means to copy all parties involved in this case (per instructions in Minute Order #3); however, we are submitting the original plus five (5) copies to the Commission as instructed.

2016 FEB -1 AM 9:04

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COMMISSION ON WATER RESOURCE MANAGEMENT  
STATE OF HAWAII

Surface Water Use Permit Applications, ) Case No. CCH-MA 15-01  
Integration of Appurtenant Rights and )  
Amendments to the Interim Instream Flow ) WITNESS LIST  
Standards, Na Wai Eha Surface Water )  
Management Areas of Waihee, Waiehu, Iao )  
and Waikapu Streams, Maui )  
\_\_\_\_\_)

WITNESS LIST

PARTY: GORDON ALMEIDA, NOELANI & ALLAN ALMEIDA

NAME/ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Noelani Almeida	Testimony	Ex 3623-Almeida-1
	Supporting information	Ex 3623-Almeida-2
	Supporting information	Ex 3623-Almeida-3
	Supporting information	Ex 3623-Almeida-4

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## EXHIBIT 3623-ALMEIDA-1

### COMMISSION ON WATER RESOURCE MANAGEMENT STATE OF HAWAII

Surface Water Use Permit Applications,	)	Case No. CCH-MA15-01
Integration of Appurtenant Rights and	)	
Amendments to the Interim Instream Flow	)	TESTIMONY OF NOELANI ALMEIDA;
Standards, Na Wai Eha Surface Water	)	EXHIBITS "3623-ALMEIDA-1 - 4"
Management Areas of Waihee, Waiehu, Iao	)	
and Waikapu Streams, Maui	)	
	)	

#### TESTIMONY OF NOELANI ALMEIDA

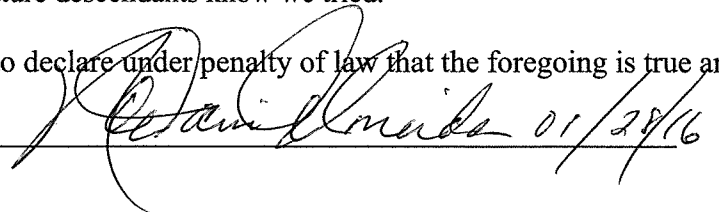
1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 3623, filed with the Commission on Water Resource Management on July 16, 2012. My husband, Allan, and I, Noelani Almeida, are the owners of TMK (2) 3-3-001-023. My cousin, Gordon Almeida, is the owner of TMK (2) 3-3-001-002, which is adjacent to ours. We manage the parcels collectively as an 'ohana and are thus applying for a single water use permit. Our lands both include Land Commission Award ("LCA"), No. 3234C:2 to Kaianui, confirmed by Royal Patent ("RP") No. 4256 to Kaianui. Gordon and I are both direct lineal descendant of Kaianui.

2. Our properties have appurtenant rights because it was in kalo cultivation at the time of the Māhele. Please refer to our previously submitted Māhele records with our application. Both the LCA and the Royal Patent refer to a Poalima on Apana 2, which is also shown on the sketch in the LCA. The claim of Kaianui in the Native Testimony refers to Apana 2 as "Aina Kalo" or kalo land. The claim of Kaianui in the Native Register is for "Helu 448," but it must have been renumbered to 3234C at some point. The claim refers to land in Paukūkalo, Nehe and Waiehu, which correspond to the locations described in both foreign and native testimony in support of LCA 3234C, and the two apana described in the LCA and RP are in Nehe and Paukūkalo. With respect to the land in Paukūkalo, Kaianui's claim describes it as "27 loi" (of which 7 were

taken back by the konohiki). The land is described as being “ke kahawai nee [?] ke kai,” or between the stream and the sea, which is the location of our kuleana land (across Wailuku River / Iao Stream). This land has been in our family continuously since the Māhele. Fishery resources were recorded in the Register and Testimony Volumes of the Land Commission, of which 202 claims were on Maui, including Kaianui's two ponds in the ili of Paukūkalo. Therefore, Kaianui had sufficient water to maintain his loko kalo (ponds in which both fish and kalo were raised). See exhibit “3623-ALMEIDA-2” (four pages, without attachments) copy of which was previously submitted with our SWUPA application; exhibit “3623-ALMEIDA-3” an excerpt from “A Catalog of Hawaiian Place Names Compiled from the Records of the Boundary Commission and The Board of Commissioners to Quiet Land Titles of the Kingdom of Hawaii;” and exhibit “3623-ALMEIDA-4” from page 265 of VOLUME I: KA HANA LAWAI‘A A ME NĀ KO‘A O NA KAI ‘EWALU A HISTORY OF FISHING PRACTICES AND MARINE FISHERIES OF THE HAWAIIAN ISLANDS for additional information in support of this testimony.

3. The expense of translating the Māhele records into English, printing, binders, and postage will greatly impact us as senior citizens on a limited income. We will not be able to afford making copies to transmit to all parties. However, we will transmit the required copies to the Commission. We feel we have already submitted all the required documents and re-submitting the same documents is futile and added expense we can't manage. Effort was made according to the Commission's suggestions for translation, but unfortunately, that party was unable to kokua. By not complying to orders disqualify us for water due to cost and the decision to take care of our families' needs, we chose our 'ohana. Kaianui's Māhele records clearly indicate justification (without English translation) for the amount of water he required to maintain his lo'i and other crops and for what we are requesting. This process is taking a toll on us and this may be our final attempt to get back what is rightful ours. We want this record to let our 'ohana and future descendants know we tried.

I, NOELANI ALMEIDA do declare under penalty of law that the foregoing is true and correct.

Dated: Wailuku, Hawai'i,  01/28/16

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COMMISSION ON WATER RESOURCE MANAGEMENT  
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Management Areas of Waihee, Waiehu, Iao )  
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\_\_\_\_\_ )

EXHIBIT LIST

PARTY: GORDON ALMEIDA, NOELANI & ALLAN ALMEIDA

EX. NO.	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
3623-Almeida-1		Testimony of Noelani Almeida	
3623-Almeida-2	Supporting documents with application	Attachment	
3623-Almeida-3	Place Name (Paukūkalo)	Excerpt from: A Catalog of Hawaiian Place Names Compiled from the Records of the Boundary Commission and The Board of Commissioners to Quiet Land Titles of the Kingdom of Hawaii	
3623-Almeida-4	Source of ponds	VOLUME I: KA HANA LAWAI'A A ME NĀ KO'A O NA KAI 'EWALU A HISTORY OF FISHING PRACTICES AND MARINE FISHERIES OF THE HAWAIIAN ISLANDS (page 265)	

ATTACHMENT

**Exhibit "1":** Copy of 7.5 minute series USGS topographic map showing the location of some of the springs that still flow intermittently

**Exhibit "2":** TMK map showing location of our property, and close-ups showing our property and proposed uses

**Exhibit "3":** Photographs of the location of our intended use

**Exhibit "4"** Documentation of appurtenant water rights

**SUPPLEMENTAL INFORMATION for SWUPA:**

**Box 2: Source Landowner**

My husband Alan and I are the owners of TMK 3-3-001-023. My cousin, Gordon Almeida, is the owner of TMK No. 3-3-001-022, which is adjacent to ours. We manage the parcels collectively as an `ohana and are thus applying for a single water use permit. .

**Boxes 7(a) & (b): Stream Diversion**

We hope to use water from the springs and wetlands that historically fed lo`i kalo and fishponds cultivated by Native Hawaiians in Paukūkalo. Ancient Hawaiians built terraced lo`i all along the springs' natural drainage courses, including on our kuleana land. Currently, the springs flow only during heavy rains. It is our belief that if sufficient flow is restored to `Īao Stream, the springs would flow again. We do not seek to divert water from `Īao Stream unless the naturally-occurring springs are not restored.

**Box 8: Flow Measurement**

See explanation for Table 1, Box 11, below.

**Box 12: Appurtenant Rights**

Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele. Attached hereto as Exhibit "4" are true and correct copies (with highlighting added) of: (a) Land Commission Award No. 3234C to Kaianui; (b) Royal Patent No. 4256 to Kaianui; (c) the Foreign Testimony in support of Kaianui's claim (together with a copy that has been enhanced by tracing); (d) the Native Testimony in support of Kaianui's claim; and (e) Kaianui's claim, from the Native Register. Both the LCA and the Royal Patent refer to a Poalima on Apana 2, which is also shown on the sketch in the LCA. The native testimony refers to Apana 2 as "Aina Kalo" or kalo land. The claim of Kaianui in the Native Register is for Helu 448, but it appears to have been renumbered to 3234C at some point. The claim refers to land in Paukūkalo, Nehe and Waiehu, which correspond to the locations described in both the foreign and native testimony in support

of LCA 3234C, and the two apana described in the LCA and Royal Patent are in Nehe and Paukūkalo. With respect to the land in Paukūkalo, Kaianui's claim describes it as "27 loi" (of which 7 were taken back by the konohiki). The land is described as being "ke kahawai nee [?] ke kai," or between the stream and the sea, which is the location of our kuleana land. This land has been in our family continuously since the Māhele.

**Table 1, Box 11: Justification for Requested Quantity**

We estimated our proposed water use for wetland kalo cultivation by multiplying the amount of land on which we intend to grow wetland kalo (1/3 acre) by 300,000 gallons, the average amount of water we understand is required to grow healthy wetland kalo.

We estimated our proposed domestic water uses for bananas and other fruit trees, vegetable and herb gardens, and watering our yard by multiplying the 2002 State of Hawai'i Water System Standard for Maui County of 3000 gallons per acre by the net acreage of each TMK parcel after excluding the estimated area occupied by our homes and the 1/3 acre we plan to put in wetland kalo cultivation. The net acreage was 1.53 acres for TMK parcel 22 and 0.392 acres for TMK parcel 23.

**Table 3: Alternatives Analysis**

We seek to exercise our traditional and customary and appurtenant rights as native Hawaiians to cultivate kalo and other subsistence crops, which are constitutionally protected rights. The use of spring water for such cultivation on our `ohana land, and in the Paukūkalo region in general, is long-established and dates back to ancient times. By definition, such use should not be required to use alternative, non-traditional and customary sources. Even if such a requirement applied, there is no potentially available alternative source that is economically practicable, except for water directly from `Īao Stream. We seek to cultivate kalo and other subsistence crops on our land for cultural and subsistence purposes. An alternative source that would require us to pay for water instead of the naturally occurring spring water or stream water would make our practice economically impracticable, and thus effectively deny us our traditional and customary right to grow kalo on our land. As shown below, each potentially available alternative to the natural springs, other than stream water, imposes a cost on our exercise of our constitutionally protected rights.

**Municipal Sources.** Our domestic water service is a typical residential service and does not have the capacity to deliver the volumes of water we require to cultivate kalo and our other uses. Even if the Maui County Department of Water Supply were willing to provide municipal water for kalo cultivation by installing a larger water meter, the cost of using municipal water for such purposes would be prohibitive. Additionally, water from the Maui County Department of Water Supply is chlorinated, which is detrimental and unsuitable for wetland kalo.

**Wastewater reuse.** Reusing wastewater is impracticable because we would still be required to pay for large volumes of flowing water. As a small user engaged in traditional, non-commercial uses, we do not have the means to hookup to and use that water. The closest wastewater treatment plant is in Kahului.

**Desalinization.** Desalinization of brackish water is not a practicable alternative because we are not aware of any such plant having been built on Maui.

**Ground Water.** Even if we were able to secure the permits necessary to drill a well and pump ground water for our uses, installing and operating such a well to provide flowing water for kalo cultivation would be unprecedented and extremely burdensome. As a small user engaged in traditional, non-commercial uses, we do not have the means to install and maintain such infrastructure.

### **Table 3, Section C: Additional Requirements**

#### **1) Our proposed new use(s) will maximize beneficial use(s) and are in the public interest**

HRS § 174C-2(c) provides that the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are “in the public interest.” We do not propose to take water directly from `Īao Stream, but rather that sufficient water be restored to the stream to replenish the water table and allow the springs to flow again. The water we are requesting will be predominantly for kalo cultivation by traditional means that we will use family purposes. We will also be growing several varieties of fruits and vegetables. We are Native Hawaiians engaged in traditional agricultural practices, and our crops help maintain ecological balance and scenic beauty. As such, our proposed use of stream water is consistent with the public interest.

Kalo cultivation by Native Hawaiians is also a protected public trust purpose. Waiāhole I, 94 Haw. at 137, 9 P.3d at 449; see also Haw. Const. art XII, § 7 (protecting traditional and customary Native Hawaiian rights); HRS § 174C-101(c) (specifically protecting the right to cultivate kalo on one’s own kuleana). Our use will support other existing public trust purposes such as: (1) the maintenance of waters in their natural state; (2) resource protection; (3) water for domestic purposes; and (4) the protection of traditional and customary Native Hawaiian rights and appurtenant rights.

Kalo cultivation is a “Reasonable-beneficial use,” which is defined as “the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and public interest.” HRS § 174C-3. As indicated, our proposed use is consistent with state and county land use plans and the public interest. It will also be “economic and efficient” because we will only use the amount we need.



**2) Our proposed use(s) will not interfere with any existing legal use**

Our proposed use will not interfere with existing legal uses. As kuleana users, we have first priority by law.

**3) Our proposed use(s) will not interfere with the rights of the Department of Hawaiian Home Lands**

To the best of our knowledge, DHHL has not filed an application to use water from this source. While we are aware that DHHL has outstanding reservations for municipal water meters in Central Maui, our use will not interfere with those reservations, which are largely served by ground water sources. Instead, our proposed use will actually help to protect DHHL's rights because water restored to 'Īao Stream, in addition to feeding the springs, will recharge the aquifer, protecting the health of the aquifer system for DHHL's present and future ground water uses.

## EXHIBIT 3623-ALMEIDA-3

<http://www.ulukau.org/cgi-bin/hpn?a=d&d=HASH014a824072ae3d7185328919&v=2>

Excerpt from:  
A Catalog of  
Hawaiian Place Names  
Compiled from the Records of the Boundary Commission  
and The Board of Commissioners to Quiet Land Titles  
of the Kingdom of Hawaii

### **Paukukalo**

**Island:** Maui

**Ahupuaa:** Wailuku

**Feature:** 'ili kū

**Comments:** Returned by I. Kaeo at the Māhele, retained by Crown. Although not listed among Crown lands in Indices of Wards, it is part of the Crown ahupua'a of Wailuku, RPG 3343. Paukukalo occupies much of the land between the ahupua'a of Waiehu and the many small 'ili along Iao Stream. See Tax Map 3-4-00. LCAw 3234-C to Kaianui: "Apana 2. Ili o Pauku-kalo... 3.5 eka." TMK 3301:22. Also LCAw 1759:9 to Kaupa, 3253 to Hiona, 3386 to Pehuino, 435 & 7742 to Kahale, 11171 to Kalaikoa (TMK 3301).

**Lexicology:** paukū-kalo. PEM: taro piece.

**Source:** MB 38,210,211; IN 660; USGS 1955.

**Quadrangle:** 50-04

**North:**

**East:**

**Catalog Number:** 234.04.005

## EXHIBIT 3623-ALMEIDA-4

- 1853 M. Kekauonohi at Lahaina, Maui. A house lot on the *mauka* side of Hoolili pond. A house lot and fish pond at Halekamani.
- 2202 Iopa Napahi at Waiokama, Lahaina, Maui. A house lot nearly surrounded by ponds.
- 2418 I. Kauhi at Kahewa, Wailuku, Maui. Lot bounded on side by a small pond.
- 2432 Kahilikaula at Wailuku, Maui. The right to take fish of the sea of Halaula, as in the law.
- 2443 B Kanehaku at Keanae, Maui. One Loko (pond) in the ili of Pololua.
- 2447 Kaawa at Waiehu, Maui. A fish pond at Pahapahawale.
- 2937 Wm. Harbottle at Opana, Hamakualoa, Maui. Konohiki Fishery.
- 2937 Wm. Harbottle at Kumunui 1, Kaupo, Maui. Konohiki Fishery.
- 2965 B Kamule at Haneoo, Maui. A lot bounded *makai* by a fish pond in Kapahunui.
- 3017 Manu at Waikapu, Maui. Akule fish used to pay for work on land.
- 3036 Kupuupuu at Haneoo, Hana, Maui. Land bounded on *makai* side by a fish pond in the *ili* of Maia.
- 3038 Kealakahi at Haneoo, Hana, Maui. Land bounded on *makai* side by a fish pond in Kanahaha.
- 3113 Kauakahi at Waihee, Maui. A lot bounded on east by puuone (dune-banked pond) at Koiahi; there is also a pond named Kailiili.
- 3234 C Kaianui at Wailuku, Maui. Two ponds in the ili of Paukukalo.
- 3253 Hiona at Wailuku, Maui. Two fish ponds in the ili of Paukukalo.
- 3274 Wanaoa at Waiehu, Maui. A fish pond in Maluhia.
- 3328 Naoopu at Waiehu, Maui. There is an ooppu fishery in the stream from Kaohe to Kapuoho, which are the boundaries from *mauka* to *makai*.
- 3377 Puulau (wahine) at Waiehu, Maui. Two wai ooppu (fresh water goby fisheries), a canoe shed on the reef flats.
- 3782 Opunui at Waihee, Maui. Land bounded on Kahakuloa side by Poalima Fish Pond [fishpond worked on Friday tax days].
- 3379 Puna at Ahikuli, Wailuku, Maui. A fresh water ooppu fishery.
- 3419 B Pupule at Waiokama, Lahaina, Maui. A fish pond.
- 3432 Kula at Waiehu, Maui. The pond named Kahakumaka at Pahapaha.
- 3441 Kapoula at Waiehu, Maui. A fish pond at Pahapahawale.
- 3866 Piimaiwaa at Waihee, Maui. Land at Puulolo bounded on *makai* side by Kuihelani's fish pond.
- 3386 Pehuino at Wailuku, Maui. Three fish ponds in the ili of Paukukalo.
- 3862 Pu at Waihee, Maui. A pond at Makaaka.
- 3887 Kawainui at Waihee, Maui. One pond at Kapoho.
- 3887 C (3887 B) Mahoe at Waihee, Maui. One pond.
- 3905 Nahinu at Haiku, Maui. I hereby tell you of my land claims. Nukupono is a *kuleana* (right), one section is a *kai* (fishery), gotten from my parents in 1832, upon the passing of Kaahumanu. At Haiku.
- 3905 B Kaili at Pauwela, Maui. A pond at Haliipali.
- 3905 D Keliiaa at Pauwela, Hamakualoa, Maui. Noni a kai (fishery), a *kula* land and a *kalo* land.
- 3905 F Konohia at Kaupakulua, Maui. An ocean fishery at Paehala.
- 3905 G Keonekapu at Peahi, Hamakualoa, Maui. An olona patch and ie patch [items used to make fish nets and traps], and stream fishery.
- 3905 H Kuewa at Peahi, Maui. The *kuleana* is in Hukioho; there is a *kai* (fishery).
- 3905 I Kuhaohao at Halehaku, Hamakualoa, Maui. An olona patch and ie patch [items used to make fish nets and traps].
- 3905 K Piopio at Halehaku, Hamakualoa, Maui. An olona patch and ie patch [items used to make fish nets and traps].

